

MINUTES

MONTANA SENATE 58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON HOUSE/SENATE JOINT RULES

Call to Order: By **CHAIRMAN FRED THOMAS**, on December 20, 2002 at 9:00 A.M., in Room 317C Capitol.

ROLL CALL

Members Present:

Sen. Fred Thomas, Chairman (R)
Sen. Bob Keenan, Vice Chairman (R)
Sen. Vicki Cocchiarella (D)
Sen. Jon Ellingson (D)
Sen. Jim Elliott (D)
Sen. Duane Grimes (R)
Sen. Walter McNutt (R)
Sen. Corey Stapleton (R)
Sen. Emily Stonington (D)
Sen. Bob Story Jr. (R)
Sen. Jon Tester (D)
Rep. Roy Brown (R)
Rep. Jeff Laszloffy (R)
Rep. Dave Wanzenried (D)
Rep. John Brueggeman (R)
Rep. Dan Fuchs (R)
Rep. George Golie (D)
Rep. Christopher Harris (D)
Rep. Christine Kaufman (D)
Rep. Dave Lewis (R)
Rep. Doug Mood (R)
Rep. John Witt (R)
Rep. Cindy Younkin (R)

Members Excused Sen. Dan McGee (R) proxy
Rep. Jim Shockley (R) proxy
Rep. Tim Dowell (D) proxy
Rep. Larry Jent (D) proxy

Members Absent: None.

Staff Present: Greg Petesch, Legislative Branch
FREDELLA D. HAAB, Secretary

Please Note: These are summary minutes. Testimony and Discussions are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SJR #1, 12/12/2002

CHAIRMAN FRED THOMAS, SD 31, STEVENSVILLE, asked if everyone had a chance to look at the changes?

REP. DAVE WANZENRIED, HD 68, MISSOULA, asked if this was factual meeting or a hearing?

CHAIRMAN THOMAS said this was a meeting of the Joint Rules Committee and they would work on proposed changes and finalize them.

SEN. ELLINGSON, SD 33, MISSOULA, asked if they were going to vote on the changes today?

CHAIRMAN THOMAS said they would vote on changes "yea" and "nay" and put the Resolution into final form.

SEN. ELLIOTT, SD 36, TROUT CREEK, asked if that indicated amendments would be in order at that hearing?

SEN. EMILY STONINGTON, SD 15, BOZEMAN, wanted to hear from the Legislative Council on 40-80. It concerns the extraordinary 2/3 vote when they are adding a termination provision, late effective date, or a contingency to any bill. For example, there were going to be bills that the Governor has her income tax package tied to her tourist tax where it may be very appropriate to have that contingency.

CHAIRMAN THOMAS said he understood that Mr. Petesch had concerns and would let him address them. He did have concerns of his own that would require the super majority vote.

Mr. Greg Petesch, Legislative Branch, Helena, said the proposal came out of a subcommittee of the Legislative Council that worked on the issue. It arose shortly after we completed codification at the end of the last session. The reason the issue arose was because he informed the Council that they barely got the code published by October 1 this last session. It was because of the multiple versions of code sections that existed in the Montana Code and because of the time required to put those multiple versions of code together. The Council appointed a sub committee to work on the issue and the sub committee was composed of **REP. BRAD NEWMAN, HD 38, BUTTE, REP. MARK E. NOENNIG, HD 9, BILLINGS, SEN. STEVE DOHERTY, SD 24, GREAT FALLS and SEN. TOM BECK, SD 28,**

DEER LODGE. This proposed rule was the subcommittee's attempted solution for the issue of multiple version code sections. The full Legislative Council endorsed the subcommittee's proposal. This binder was what they had to work with this past interim on multiple versions of code sections. Multiple versions of code sections were caused by termination dates, delayed effective dates, and contingencies. The example **SEN. STONINGTON** gave was a coordination provision. That was not a contingency. A contingency was something that says, "if this occurs, then the law reads this way."

There was another concern with multiple versions of code sections in addition to the burden on the staff and preparing for the code. That was the ability of someone to read Montana Law and know what it was at any given point in time. It was often difficult with contingencies. As they were checking on contingencies in effort to get the code out, we contacted agencies who were responsible for reporting them and in some instances they couldn't tell us whether the contingency had occurred. That was a problem if the agency charged with the responsibility for administering the law can't tell them which versions of the law were in effect, how were the citizens to know which version of the law was in effect. The Fish & Game laws were littered with multiple versions of code sections. The other problem created for the staff was when you called the special session in August. They had to update the data for all the contingencies that had occurred or versions that had gone away or changed prior to the convening of that session so that we could be amending the right versions of law. They needed to amend the right versions of law to do the people's work.

He informed the Council at the time the report was received unless something was done to curb this continuing growing practice in Montana, he would bring a bill forward to change the general effective date of laws to January 1 because he had grave concerns as to whether they would be able to publish the code by October 1.

REP. CHRISTINE KAUFMANN, HD 53, HELENA, asked if this did anything to clean up the current codes or only prevented the further abuse? Also, did it prevent a sunset from being placed on a bill?

Mr. Petesch said it would be applied only prospectively and it prevented a sunset date because it had a termination provision.

REP. CHRISTOPHER HARRIS, HD 30, BOZEMAN, asked if there were any other alternatives to this remedy that were discussed or considered?

Mr. Petesch said there were some discussions that might have been considered but it had been determined it was more appropriate as this was an internal legislative procedure to identify it. They tried to determine what other states do and found in talking to others, this was not a problem anywhere else. Most states have a handful with code sections of multiple versions. In Montana we have hundreds. It has become a "darling" of the legislature to add termination provisions and contingencies to their bills.

SEN. ELLIOTT asked **Mr. Petesch** if some time ago the sunset provision was regarded as a good aspect? They could try them and if they didn't work, just sent them down the road.

Mr. Petesch said that was what a termination provision does. It had a statute passed by the legislature and at a point in time if the law didn't work they could always repeal the law. What they were finding was, and you will see this session, a number of bills amending or extending termination provisions added by the legislature. Almost nothing was terminated even though a termination clause had been added. They added additional legislation to be considered because you had a termination in the first place.

SEN. ELLIOTT said in substance this was a nice idea but it didn't work.

Mr. Petesch was unwilling to characterize it as a nice idea.

SEN. ELLIOTT asked regardless of the value of the idea if he were willing to offer an opinion?

Mr. Petesch said that was his opinion.

SPEAKER DOUG MOOD, HD 58, SEELY LAKE, asked **Mr. Petesch** if he would go over the reference to the U.S. Supreme Court which could void certain sections?

Mr. Petesch said that example was the joint and civil liability provisions in Montana law. That section provided this version of law applied until a final decision was rendered by a court finding the provision unconstitutional, at which point and time a different provision for liability becomes effective. What had happened in practice was the courts were aware of this provision and the purpose of that was essentially to prevent the court from finding that provision invalid in totality because it was considered at the time it was put into place that the alternative would be unpalatable to the court. The court had never found that provision invalid in its entirety. Pieces of that provision had been chipped away at by judicial teams. They never had a

complete finding that the section as written was invalid but as to what the status of that particular section of law was in application to any given fact situation was often invalid.

SPEAKER MOOD said you can't really tell the code.

Mr. Petesch said at any given point of time he could not tell what the law was. He found that embarrassing when people called him and asked what was the Montana law on a certain topic.

REP. HARRIS said he thought **Mr. Petesch** had outlined a very serious problem but he thought there was another issue here and that was the possibility of some legislative mischief. If he wanted to make some bill difficult to pass, he could put a sunset provision on it.

Mr. Petesch stated it was addressed in subsection three, if the bill did not have one originally, it may not be added to an introduced bill unless the amendment adding it was approved by a 2/3 vote.

REP. DAVID WANZENRIED asked **Mr. Petesch** if the requirement of 2/3 vote in itself eliminated the confusion as they had reduced the volume of these things.

Mr. Petesch said "no" it did not eliminate it but it would be more difficult to create the confusion in the first place.

REP. WANZENRIED questioned whether there was anything they could do if this rule didn't pass to impose a discipline upon us?

Mr. Petesch said in drafting they had tried to come up with ways to avoid this. What they did in drafting, if you want one rate to apply for a certain period of time, and another rate to apply for a different period of time, they were going in and putting into the statute for the period beginning on this date through this date, the fee was this amount, and then beginning on that date the fee will be this. He was going to have some very massive code commissioner bills to take out the provisions that were no longer applicable at some point in time. That was a better alternative than having someone unable to read the law and not know what it was.

SEN. ROBERT STORY, SD 12, PARK CITY, questioned **Mr. Petesch** on the 2/3 vote? A lot of these sunset bills passed by a fairly large margin. He thought of two or three of them that are fairly small innocuous bills. They are fairly popular and they get a sunset on them because, as you said, it was a popular way to get

their foot in the door but they still get 2/3 and you probably won't keep them off the books. Did you have any idea about that?

Mr. Petesch said they did not research the votes by which bills containing these provisions passed.

SEN. DUANE GRIMES, SD 20, CLANCY, asked if there was any one condition that was the primary problem here? Was the biggest issue the contingency clause?

Mr. Petesch said the contingency clause was the one that made it most difficult to know what the law was at any point of time.

CHAIRMAN THOMAS wanted to go through other areas that might have discussion points on. They can segregate those areas that were an issue and vote on them separately. Otherwise they would take a global motion and adopt the areas that were not segregated. At this point he was going to segregate issue 40-80.

REP. JEFF LASZLOFFY, HD 22, LAUREL, had a question on 40-170. It talked about a bill being amended by a second house where the effect of the combined amendments was to return the bill to the original form. He wondered why they would amend a bill to return it to the original form?

Mr. Petesch stated this proposed change would operate as it was done in practice in the past. Part of the concern came from our new laws tracking system that provided so much information to the public that had never been available before. How this rule would work was a bill passing the Senate was transmitted to the House; the bill was amended in House Committee; it then goes to the floor and it was determined that the House Committee amendment should be reversed. A floor amendment returns the bill to the form in which it passed the Senate. Actually that bill has been amended twice but it was identical to the bill that passed the Senate. There was no need to return the bill to the Senate for the Senate to concur on the House amendments. This rule clarified the practice that has been in place if the result of the amendments were nil, the bill did not have to be returned for concurrence. But, if you looked at the status of that bill it would show that it was amended twice. In the instance this happened in the last session, it generated innumerable phone calls contesting the procedure by which the bill was submitted to the governor. The procedure was valid but there was no way for anyone to identify that the procedure was valid. This would put in place a way to point to people to show them that the procedure was valid.

CHAIRMAN THOMAS asked **Mr. Petesch** following the House returning the bill to its original form, the bill then goes straight to the Governor's office because both houses have passed an identical bill. **Mr. Petesch** said that was correct.

REP. WANZENRIED thought it should say something about being identical. There was the opportunity for it to be restored slightly differently. Wasn't that a possibility?

Mr. Petesch said it was a possibility but under this rule it would not be in the form that the bill passed the house in which it originated. It would be slightly different. The changes that were proposed were designated by House staff as a result of a meeting he had with **Chief Clerk, Marilyn Miller, Helena** and **Assistant Chief Clerk, Marilyn Petek, Helena**, following the conclusion of the last session. They had some suggestions for improvement they thought would clarify things.

SPEAKER MOOD asked if these were actually your amendments?

Mr. Petesch said he prepared the amendments but those amendments came out of the meeting he had between the people he mentioned. The ones that are designated are things that he identified in the Rules. The original meeting took place about a week after the session. We had a follow-up meeting about one month ago where he knew **Secretary of the Senate Rosana Skelton, Helena**, was present. The amendments that came out of my notes on that meeting and the ones that were designated as (proposed by Greg) were things that he identified in the Rules that he believed needed to be corrected. The original meeting took place within a week after the session.

SEN. ELLIOTT asked if they had only commented on changes in this document and not on other changes?

Mr. Petesch said what they were discussing now was what was mailed to everyone and then he had individual member amendments.

SEN. ELLIOTT wanted to know the reasoning behind the issue on page 9.

CHAIRMAN THOMAS said that area would be segregated and if a motion was brought forward to adopt it, they would vote on it.

Mr. Petesch said the reason for that proposal was the bill in dispute for example was either a House bill or a Senate bill and the House had rejected the amendments on the House bill. In many instances the sponsor of the bill was on the conference committee and it helped with getting staff notices out if the house of

origin, which was the last entity to have acted on the bill has the ability to get the conference committee scheduled and staff informed.

CHAIRMAN THOMAS asked if they wanted to segregate that one?

SEN. ELLIOTT said he thought it would be best.

SEN. COCCHIARELLA asked about page 15 and why they were changing it?

Mr. Petesch said there were in essence three different proposed amendments to this rule dealing with bill draft requests. That was why there was an asterisk between the two strike outs on page 15 and there was an additional change on page 17.

The reason for the first sentence proposed to be stricken was that currently, virtually all of the bills that had a "'by request" line on them, now go through an interim committee. The exception when an individual member requested a bill on behalf of an agency. It still happened but it was usually because the committee has ceased meeting. As written it said that all of these bills received lower priority unless the requesting member assigned a higher priority. In essence those bills come in very early and most of them that were requested by committee were drafted before we got very many individual requests.

The second proposed change was specifically from me. This was added to this rule after the HD court held that draft bills had to be made available to the public. There are very few of us with the knowledge what went on at that time. When people read this rule, they thought a legislator draft meant a bill draft submitted by an individual member. That was not what this meant. When this was added, it was stated specifically in a committee meeting that a legislator draft was one that was drafted and ready to be processed by the *legislator*. In order to constitute a legislator draft you would have to draft your bill and the understanding was that it would be done so well that no staff time would be necessary to process. This had been tried once in the ensuing eight years and the bill was so poorly done that the legislator dropped it.

On page 17 this particular provision also confused people because this applied to those "by request of" bills, essentially agency legislation. They were already required in this rule to be preintroduced by the 5th working day prior to the beginning of the session. This year it was December 27. This said those bills had to have been additionally requested by an individual member by December 23 or it was put on hold. December 27 was a fairly

late day for pre introduction. In reality if those bills were not through our process by December 23, they were going to be cancelled for failure to meet the pre introduction deadline. This required extra paper work for us and it required the bill be put on hold when in essence if a pre introduction form hadn't already been mailed out, the bill was going to die in a couple of days anyway.

SEN. KEENAN wanted page 23, 40-100, 4b to be segregated for discussion. He thought they had two options there, either change the statute or adopt this change. We are changing our rules concerning fiscals to conform to a statute which was ten days and we might consider changing the statute to eight days.

Mr. Petesch said this specific provision does not apply to a fiscal note, it applies to a local impact statement. Those were the ones that pre proposed a new duty or responsibility on a local government of specific financing needs. He thought the fiscal note was already eight days. This was the local impact note and that was fairly rare. He believed **REP. DAVE LEWIS, HD 55, HELENA**, had one this session. The proposal was to change the rule to conform to the statute because a rule cannot supercede a statute.

SEN. KEENAN withdrew his request for segregation.

Secretary Skelton asked about the six days for a fiscal note?

Mr. Petesch said it was on page 22, 40-100, subsection 3 and that it was six days unless additional time was granted. He said the reason the conflict occurred where the bill requiring local impact notes as introduced had eight days and it was amended to extend it to ten days after the rules they adopted and it has never been followed through.

SEN. STONINGTON asked a question about page 8 on section 2-3-212 of the Montana Code, the electronically recorded minutes and a written log and what did it require?

Mr. Petesch stated that statute defined what our legal minutes for purposes of meeting that are required to be open and what that required was that the minutes had to include the date, time and place of meeting, a list of the members of a public body in attendance, the substance of all matters proposed, discussed or decided and at the request of any member a record of votes taken by individual members. They didn't have to keep roll call votes unless an individual member requested a roll call vote.

SEN. STONINGTON asked if any member of a committee may request a roll call vote? **Mr. Petesch** said yes.

CHAIRMAN THOMAS asked for further discussion. He then segregated 40-80 and 30-30.

SEN. KEENAN asked about page 33, 40-230. He wanted some explanation and discussion about this recommendation for a Governor's amendment to be considered first by the house in which the bill originated.

Mr. Petesch stated that it was proposed for clarification. He believed this was already the case. If you read sub section 3, it said "if the Governor returns a bill to the originating house with recommendations for amendment, that house shall reconsider it" and then under sub section 4, "the originating house shall transmit to the second house, the bill and the originating house's approval or disapproval." That was not always followed in the last session and so this put that requirement up front in the rules. In essence it clarified the rule.

CHAIRMAN THOMAS asked **Mr. Petesch** that in this case the Governor's amendments are recommendation for amendments that were specifically made to the Senate versus the House.

Mr. Petesch replied that the bill was returned to both houses with the recommendation for amendments but the way he read this rule it was the originating house that was suppose to take action first and then transmit to the second house what it did in regards to those amendments. In practice the Governor returned the bill with a message to both houses and this was designed to clarify that the house of origin acts on those first.

SEN. GRIMES asked if there was any reason, other than the fact that it seemed to be implied, that it needed to happen since both houses had to vote on that issue anyway?

Mr. Petesch said if you are not going to have this statement in there, he thought it would be wise to revise the rest of the rule to adopt the procedure that conforms with your practice rather than have the rule be violated.

REP. WANZENRIED asked if not following this rule was intentionally or inadvertently done during the last session?

Mr. Petesch stated he thought it was done inadvertently.

REP. WANZENRIED asked if it had any effect on the outcome of any of those cases you are familiar with?

Mr. Petesch said he was not familiar with any but perhaps they could refer it to **Chief Clerk Miller**.

Chief Clerk Miller said the only problem was the clerical work. When it goes to the house that didn't have the bill, the bill's clerk has to find the bill before they can mark on the back of the bill. If it was a Senate bill and we wanted to hear it first and the bills' clerk was looking for the bill, it would not have been in the House because it was still in the Senate.

Mr. Petesch said in essence what **Chief Clerk Miller** explained was the body was acting on a bill not in its possession. That was not good practice.

SEN. GRIMES thought he probably could see where this would come into play and that was at the very end of the session. When one house was hung up on something and the other house was ready to take care of business before it, it cuts both ways.

PRESIDENT KEENAN said he talked to **Secretary Skelton** and she agreed with **Chief Clerk Miller**. It may cause some concern when one house or the other may be in an opening pattern waiting for the originating house to act and then physically anticipating the bill over to our rostrum. But the process that they had used caused confusion and could lead to mistakes. It was both **Secretary Skelton** and **Chief Clerk Miller** recommendation that we make this change.

SEN. STORY said his question was if there was a time frame found elsewhere in the Rules that tells you how fast they can move the bill from one house to another?

Mr. Petesch said in reality the time period was as fast as you decide to move it across.

CHAIRMAN THOMAS said that the reason it was different in the past, was the clarification of doing it this way or a different way. They didn't have a bill in front of them. They only had the Governor's proposed amendments. That was the only thing voted on, not the bill. However, it was still just the Governor's proposed amendment in front of them on a bill that each house had agreed to.

Mr. Petesch said in essence it was true but you had to vote in passing the bill in the same form and you had to remember the Governor's suggestions were just that, suggestions for amendments. At some point they had to vote on the instructions to the engrossing staff which were in fact real amendments and if the body that does not have the bill votes on those, you can only

act on a bill in your possession, the tenant of a two-house body. The House acted on house bills that it possessed and then sent it to the Senate and they did what they wanted to at that point. At some point you need to make the notations that this was returned to the body and you have the formal bill in possession of the House and the Senate was then acting on clerical instructions for engrossing. That was inappropriate because the Senate doesn't have the bill to amend.

SPEAKER MOOD said it seemed to him that there was a reason to pass this clarification other than clerical and it appeared to be a good courtesy to the primary sponsor to allow them to make comments about the Governor's amendments first before it goes to the other house.

SEN. STORY said the only other option would be that this language was good and put another clause and say unless the first house wants to pass the bill off to the other house, and let them deal with it while they are busy with something else.

CHAIRMAN THOMAS asked if there were any other areas that were in this proposed package that they had in front them that they would like to discuss? He asked for a global motion to adopt these amendments proposed but segregate 40-80 and 30-30.

SEN. COCCHIARELLA Motion/Vote: **SEN. COCCHIARELLA** moved **TO ACCEPT THE PROPOSED AMENDMENTS EXCLUDING 40-80 AND 30-30. Motion carried unanimously.**

CHAIRMAN THOMAS asked the House members to vote on the amendments and they voted unanimously for the motion. **Rep. TIM DOWELL, HD 78, KALISPELL,** proxy voted yes, **REP. LARRY JENT, HD 29, BOZEMAN,** proxy voted yes, and **REP. JIM SHOCKLEY, HD 61, VICTOR,** proxy voted yes. Then he asked the Senate members to vote and they voted unanimously for the motion, with **SEN. DANIEL MCGEE, SD 11, LAUREL,** proxy voted yes. The motion had passed both houses and they voted separately.

CHAIRMAN THOMAS asked for motions.

SEN. GRIMES said before he made a motion on page 21, section 40-80, he wanted to discuss the sunset provisions. They, in the Legislature, liked their sunset provisions. He did not know until just now the problem with them. He thought he was probably guilty of adding a sunset provision in some cases he really didn't understand. He thought knowing what they know now, the Judiciary committees and the other committees, he thought the committees and committee chairs might be a little more cognizant of the problem. Let's try for another session and see if they

can't control that and allow the same language in paragraphs 2, 3 apply just to the contingency language and only strike subsection 4. Would the net affect assist in being able to explain what the law was?

Mr. Petesch said it would assist him in knowing what the law was.

SEN. GRIMES asked if it would assist him in getting his target date?

Mr. Petesch said it would not.

CHAIRMAN THOMAS stated that they did not have to act on it right now at this very moment.

SEN. GRIMES wanted to go ahead with it. He thought that being aware of the problem that the Legislative Council had they were going to be able to assist greatly with that problem. Committee chairs particularly in both houses could relay that information to committees. He liked the sunset provision in some cases, and would hate to take away something that was an obstacle.

CHAIRMAN THOMAS said as they knew, this provision was not in our rules at this point, so if they had a motion it would be to vote adoption of this or propose this in an amended form.

SEN. GRIMES thought he would like to move that they adopt this in amended form striking determination provision from the language. In sub paragraph three, those two would be removed and then he thought sub paragraph four could be removed all together. He thought this would be a more incremental approach to what they wanted to do here. If they had still not solved the problem for the Legislative Council, he guessed they will just have to force themselves to abide by law.

Motion: **SEN. GRIMES** moved **TO ADOPT THE LANGUAGE AS AMENDED.**

CHAIRMAN THOMAS said the motion of **SEN. GRIMES** was in front of them moving the amended version to eliminate the termination provision, delayed effective dates from this language and paragraph 4?

Motion: **REP. GEORGE GOLIE, HD 44, GREAT FALLS,** made a substitute motion **TO LEAVE THE LANGUAGE AS WAS AND TO ADOPT IT.**

CHAIRMAN THOMAS said **REP. GOLIE** has a substitute to adopt this proposal as originally brought to us on 40-80.

SEN. STAPLETON, SD 10, BILLINGS, asked if they could have a definition on contingency today?

Mr. Petesch said the example he gave them was for joint and civil liability. The bill passed by the legislature was effective on the day that the final clerks' decision was rendered finding the temporary version unconstitutional.

SEN. STAPLETON asked if they could get a definition on the contingency if it included a termination provision.

Mr. Petesch said a contingency was one where the law becomes effective upon some other occurrence happening. For example, all the requirements for social security numbers in the code are bracketed and those go away if the federal government no longer required them in order to receive federal highway funds. That was a contingency. The law changed upon somebody else doing something.

REP. ROY BROWN, HD 14, BILLINGS, asked **Mr. Petesch** about the case **SEN. STONINGTON** brought up about putting the contingency of one tax on another would it be part of this.

Mr. Petesch said he believed what she was describing was a coordination provision if this bill and that bill are both passed then the law reads thus. It was very easy to figure out at that point in time whether the other bill passed or not or that if this bill was passed and approved and that bill passed or approved, and they both amend a certain section of the law then the section of the law reads as the coordination instruction was and he understood what **SEN. STONINGTON** had described.

SEN. STORY said they had the infamous contingent voidance clause. Would it be a contingency that would require a 2/3 vote or was that more like a coordination thing that never showed up in the statute once they had eventually got there?

MR. Petesch said that may be a contingency but that was not the contingency they were trying to address for this rule. What they were trying to address were things that prevented you from knowing what the law was. That particular provision in your rules if a bill was passed reducing revenues and a corresponding reduction was not made in the appropriations then a bill, that has a contingent voidance provision in it, may not be transmitted to the Governor unless that corresponding reduction was made in the appropriation's bill. That was how that worked so in essence was self executing. What they were trying to address here and if it needed clarification were ones that required the statute that

was passed to change on the occurrence of something after the session ends.

REP. CINDY YOUNKIN, HD 28, BOZEMAN, stated that they were really trying to get at were contingencies which they had no control. Like the courts, the federal government and the federal courts doing something. They had absolutely no control over that.

Mr. Petesch said that was what they were trying to address through this rule.

SEN. GRIMES said he was not trying to be obstinate or partisan but he thought if a legislator felt that a sunset clause or a late effective date would be advantageous to their bill, then there are cases where that would help the bill no matter which side of the aisle was doing it. A 2/3 majority would just add a limitation and another hurdle for that bill sponsor to get over. He thought if they made the case to a committee that the sunset provision was extremely important for a later effective date, and those things ought to still remain an option to us even if they are the only state that did it. He thought we needed to smooth out some things for the Legislative Council but he thought they can do that on their own. For that reason he was going to oppose the substitute motion.

SEN. STONINGTON said she wanted to comment on the cultural issue of the Legislature that **Sen. Grimes** discussed. She thought this was a question of legislative discipline. As she thought about bills that they consider, they never looked at repealing things when looking into the body of the law. That was a more formal appropriate way of dealing with ideas than a sunset. What they had been asked by the Legislative Council was to change the culture of our legislative actions. Instead of using a sunset for a delayed effective date or a contingency, they should try to build support for it because people think of it as just temporary. They can reconsider it in a while. What **Mr. Petesch** pointed out was that legislative discipline ought to say that this was a good idea, let's put it into law. If it was a bad idea let's repeal it. Let's not mess up the code books with all those multiple clauses that this was effective til when and then you got to skip down and see exactly the same wording that was effective after that date. All that stuff was what makes our code books grow in weight by volumes. She thought it was a good idea. She respected what **SEN. GRIMES** said about not wanting to impede a sponsor's momentum but by the same token this was not a new problem. It was just one that has been brought to our attention at this point and asked by our code commissioner, to put some discipline into how you run this body and try to address laws in a cleaner more concise way that our citizens of our state

and ourselves can go into those code books and read and know what we are trying to say.

SEN. ELLIOTT said if democracy was the greatest experiment then these are elements of that experiment. The bills that have the sunset clause and democracy was by majority rule and the majority rule was to offer experiment to see how it works and if it was successful to keep it, then **SEN. GRIMES'** point was well taken. If there was another mechanism to allow experimentations with the majority rule that would cause the law to be repealed as **SEN. STONINGTON** speaks of, but he didn't remember repealing any laws since 1989 when we tried to repeal the tax. He thought that was the question, if they want to try something for a little while and see if it works and if it doesn't work, make it go away. He thought that was a good idea. Basically if they want to introduce a bill and this was the way to get it into law, by putting a sunset on it, that's a bad thing.

SEN. STORY disagreed with **SEN. STONINGTON** on "the let's go to the repeal idea." First of all we are not full time legislators and most of us don't spend a lot of time reading the code book hunting for things to repeal. Now with the term limited nature of the legislature you don't have the people here when the great experiment was passed and it was another one of the ten thousand programs and laws that are out there and there was no reason for them to go and revisit it unless someone particularly brings it up. He would be more supportive of opposing the amendment only because it brings in the termination provision.

SEN. GRIMES wanted to remind them what the sunset provision really does the way he would use it. He pointed out the political way you could make your bill unstable but really the sunset provision tells the legislature that we are going to pass this but it was going to be reviewed next session whether he was here or not. A classic example of that was when we allowed **Governor Racicot** to take a bunch of military guys and use them to help our juveniles out down in Dillon. We all thought that these guys don't have any experience in this, what in the world were they doing. The Governor wanted us to do that and we said okay we are going to put a sunset provision on this if we have to come back and show us that this works. He was wrong in his assessment of that and they are doing quite well. You are right but it did force it to come back and a lot of people voted for it because they knew it would come back because it had a sunset provision in it.

REP. DANIEL FUCHS, HD 15, BILLINGS, said there were cases where the legislation was offered, because something was going to transpire or not transpire and during the interim it came due,

and they were not going to be able to address it. Those were the times when they raise the vote up to 2/3 when they were basing it on something that the federal government was going to do or not do. There are those cases when that will happen.

SEN. COCCHIARELLA thought they should put something in the title or a notation on the top of the bill warning there was a contingency contained in this bill.

CHAIRMAN THOMAS thought that might be a good alternative.

REP. GOLIE really thought we needed some consistency when we come over here and make law. If it was a good bill, it'll pass. They had only so much staff and if you had seen how much comp time was out there after every session maybe this was one way of doing a little bit better on that end of it. He hoped each and every one of them would consider supporting this.

SEN. STAPLETON wanted to know if this also referred to special sessions? If they met around December, and you need thirty or forty days for an effective date, so it fell after January 1, every vote would have to be 2/3 vote.

Mr. Petesch said all bills enacted during a special session have immediate effect. We had a statute that addressed the effective dates of legislation enacted during the special session. If they were meeting between Thanksgiving and Christmas, it would apparently be a very severe crisis and he would think they would need immediate action.

{Tape: 2; Side: A; Approx. Time Counter: 25.2 - 26}.

CHAIRMAN THOMAS said to have heard the call for question, did they have any more debate.

REP. JOHN BRUEGGEMAN, HD 74, POLSON, asked even though House Bill 2 was not actually codified, often we put spending in it. Could that in a strict point of view be considered a contingency on the federal funding?

Mr. Petesch said House Bill 2 was always effective on July 1 and they appropriated spending authority from the federal government and if that was not received, that provision was never affected. It was only valid for two years regardless. House Bill 2 dies of its own volition on June 30 of the second year following its passage. He didn't believe there were contingencies associated with House Bill 2.

SEN. TESTER spoke on the substitute motion and thought it was reasonable and it helped out the Legislative Council.

CHAIRMAN THOMAS said he thought the substitute motion being proposed here should be rejected. He believed they were being asked to suspend and change the current operating procedure. He thought they needed to find another solution but not through legislative rules and tying our hands through these super majority votes.

CHAIRMAN THOMAS stated the Motion: **REP. GEORGE GOLIE** substitute motion **TO LEAVE THE LANGUAGE AS WAS AND TO ADOPT IT.**

FAILED 2-10 IN THE SENATE WITH SEN. STONINGTON AND SEN. TESTER VOTING YES. SEN. MCGEE VOTE BY PROXY WAS AYE.

CHAIRMAN THOMAS asked **Sen. Grimes** about his original motion.

SEN. GRIMES wanted to make sure that it would technically work from the Commissioner's standpoint. Just to be clear on what they were voting on, the bill that contained contingencies must be approved by a vote of 2/3.

CHAIRMAN THOMAS said it seemed to him that they ought to have his amendments drafted and proposed at the hearing. It was a very important issue and was an issue that **Commissioner Petesch** had brought to us that needed to be dealt with somehow and some way.

SEN. GRIMES withdrew his motion.

SEN. STONINGTON wondered if at the same time they tried to address this rule and maybe it was something that the Legislative Council needed to take another look at during the next interim.

REP. HARRIS said he did have a bill called the Montana Code Commission reform bill. He didn't know if it had a number yet, but it was an improvement over his version last year.

CHAIRMAN THOMAS thought **SEN. COCCHIARELLA** had a good idea about reflecting on 40-80 and maybe come to a different solution.

Motion: **SEN. ELLIOTT** moved **AN AMENDMENT IN 30-30 CONFERENCE COMMITTEES TO STRIKE THE LANGUAGE AT THE BOTTOM OF SECTION 1.**

CHAIRMAN THOMAS stated that **SEN. ELLIOTT** had moved an amendment proposed in 30-30 on conference committees. It was to strike the language at the bottom of section 1 saying that failure to make this announcement does not affect the validity of the legislation being considered. Therefore by striking that in this rule, which was only a rule, you are stating to the conference committees

that the failure to make this announcement does affect or potentially affects the validity of this legislation. Was that your intent?

SEN. ELLIOTT said his intent by striking rule was the necessary to follow the rules that were already there.

REP. HARRIS said he thinks **SEN. ELLIOTT'S** amendment was virtually compelled by the constitutional provision of right to participation.

SEN. GRIMES said it came at an inopportune time as we had more conference committees than ever in the history of the legislature and if there was a slip up somewhere, he would hate to be called back into special session. He thought he would oppose it.

CHAIRMAN THOMAS said he would add that he thought it was a very significant amendment to adopt at this point and time. It was not a constitutional provision we are addressing here. It was a rule of ours. He didn't intend to support this amendment but he could understand the issue. He told them that as Majority Leader of the Senate and in the last session, they intended to follow absolutely as much as possible to make every hearing announced ahead of time, scheduled within the rules and maybe beyond what the rules required. It was very important that the public notice and press notice get out. The President has assigned bills to committees and he had instructed them to get a hearing posted on the internet and other postings well in advance of the requirement of the rules and therefore that will continue even with conference committees and free conference committees. As the session moves along, he assured them, they will do every effort to do that.

SEN. GRIMES said he thought it was very important that we had it on the record here, so he asked **SEN. ELLIOTT** and ask everybody else this morning if they disagreed but in striking this sentence they were not implying that the reverse was true. At any time a mistake was made, it has to be corrected.

SEN. ELLIOTT said he thought it was substantially correct. The obligation for the legislature remains to inform the public about the issue being discussed. If for some reason, whatever reason, a member of the public or legislator was not even aware of the hearing, to attend that meeting or hearing, he thought that was an abnegation of duty.

Motion/Vote: **SEN. ELLIOTT** moved **TO STRIKE BOTTOM PARAGRAPH OF SECTION 1. Motion failed 6-6 with SENATORS KEENAN, MCGEE, MCNUTT, STAPLETON, STORY, and THOMAS voting nay.**

REP. WANZENRIED asked if it was appropriate to call for roll call vote of the House members on that for the record even though the Senate voted to defeat the motion? **Vote: REPRESENTATIVES BROWN, LASZLOFFY, BRUEGGEMAN, FUCHS, LEWIS, MOOD, SHOCKLEY, WITT and YOUNKIN Voting nay.**

SEN. ELLIOTT said if a bill needs money and you can find a corresponding reduction, he recalled it had to be exact, it had to be dedicated to fund it. If that money was not available or can't be found it was not transmitted. He did not know how often this rule has been used in the last several sessions but he didn't think it had been very often. If this were code perhaps, he would suggest that this was one reason to repeal this and clean it up. The other reason was because it was irresponsible fiscal management.

Motion: SEN. ELLIOTT moved TO STRIKE SECTION 2 OF 40-180.

SEN. STORY said **SEN. ELLIOTT** wasn't there the year that this was really used. He thought it was used 97 times. It was when it appeared and it was on about every other bill. What it allowed you to do was to vote for all kinds of things you knew weren't going to become law because they weren't going to find the money in House Bill 2 to pay for them.

CHAIRMAN THOMAS added that he didn't know if it was the right thing to do with these rules but he thought it was a point to consider and be discussed. It seemed to him at a point in time that this could be a culpable tool due to the political nature of things going on in the legislature. He recommended that the rule remain in effect because it was one to help stop the partisanship and he thought anytime they can eliminate partisanship in our work here, he thought it was a good thing. He thought everybody would agree to that.

REP. HARRIS said if he understood **SEN. STORY'S** description of it, it actually has the opposite effect of what you are describing. It actually invites the game playing. Can we get a clarification from **SEN. STORY**?

SEN. STORY said both **Chairman Thomas** and **Rep. Harris** are right in the way the thing works. Lots of bills show up and this session will be just like it, where it was a proposed spending bill. Eventually the budget had to be balanced so you kill a bunch of spending bills and then you go out in the next election and get hammered up in the election because you didn't vote for or against this program because you had to balance the budget. You put a contingency voidance on this stuff and you get to vote for everything. They can't use it against you politically but he

guessed he just personally didn't mind voting against bills that they can't afford.

SEN. STONINGTON said maybe she was reading this wrong, but the way this rule reads, it doesn't talk about spending bills, it talks about revenue bills. It says that a bill that reduces revenue. In truth it was a spending bill but it reads a revenue bill. She read, "reduces revenue," so what it was basically saying, if you have a tax bill that reduces revenue you have to identify with a corresponding drop in an appropriation measure.

Mr. Petesch said she was interpreting it correctly. So, if the will of this body was to use this rule, to try to do what **SEN. STORY** was talking about or what you are talking about, then you need to rewrite the rule.

CHAIRMAN THOMAS told **SEN. STONINGTON** she just gave an example and we could change it to a revenue example. She wanted to cut taxes.

SEN. STONINGTON said in her experience the rule has been used for spending bills, not for tax cut bills. If you wish to continue to have the rule, she thought they needed a motion to change the way it was written.

SEN. STORY said first of all he was certain that the contingency avoidance has been attached to spending bills but he didn't know if it were attached by rules or not or he amended it.

SEN. STAPLETON said he had the same question when he first read it and he didn't know but if you look at the end of the sentence it gives further clarification. It says, "an identified corresponding reduction in an appropriation" and if it was a corresponding reduction in appropriations that gave a definition that it was not talking about a revenue bill but reducing revenue overall.

SEN. STONINGTON stated as she understood it, if you were proposing to cut taxes, you could identify where you were going to get the money. That was where the original concept came from but it had been used all over the map. If they were going to have a rule, let's have a rule that said what they were going to do. This said it won't be transmitted to the Governor. If it doesn't have this corresponding appropriation reduction identified with it.

REP. DAVE LEWIS, HD 55, said in your relationship with the appropriations department then if someone makes an amendment on the floor perhaps to spend more money, we would simply suggest that morally they have an obligation to identify where the money

might come from. The original intent of this was, as he recalled in 1997, the Speaker was disturbed about folks rolling out bills to cut taxes and he wanted to make sure if that was the case, where in fact money was coming from. We just said if you are going to spend more money you have to say where it was coming from.

CHAIRMAN THOMAS said **SEN. STONINGTON** could be right and we need to expand this to include spending measures.

SEN. STONINGTON asked was that what you wanted to do? She just thought that it was obvious that it was used in practice already.

REP. FUCHS said he had a bill killed last session by that. It was used in the appropriations committee. When you put it into the rules and passing it by the whole body you said they are going to abide by this. We are going to do this. We are not going to transmit these bills.

SPEAKER MOOD said he seemed to recall, but it was hearsay, it was because bills were being introduced that, for example, would reduce income tax by 20%. Most people out there in the state would say "Gee that was a great idea." However the majority had the obligation to come up with a balance budget. The reason was to embarrass the majority party.

SEN. ELLIOTT asked **Mr. Petesch** if this was first introduced in 1993. **Mr. Petesch** did not recall what year. He knew it was before 1997 because he had bills before him in his tenure that had this. It may not have been used a lot before 1997 but as far as he was concerned this gave the bill all the power of a resolution which was very little. It was he thought, bad business. He thought it was bad revenue policy, and bad tax and appropriation policy to have this in.

CHAIRMAN THOMAS called for a roll call vote on **SEN. ELLIOTT'S** motion. **Motion/Vote:** **SEN. ELLIOTT** moved to **AMEND 40-180 BY STRIKING SECTION 2. Motion failed 7-20 with COCCHIARELLA, ELLINGSON, ELLIOTT, STONINGTON, STORY, TESTER, voting aye. REP. WANZENRIED voted aye.**

SEN. ELLIOTT asked why in some instances the Senate will vote first and another instance we vote together? Was there any particular reason for that?

CHAIRMAN THOMAS said he had the Senate vote first because that was the order we have over here, and last time **Minority Leader Wanzenried** wished that the House vote on that issue, so we just continued that.

In the packet that they had, two were **SEN. ELLIOTT's** proposed amendments and there was another one on page five. This proposed amendment was brought to us by **Commissioner Petesch**.

Mr. Petesch said it was actually brought to you by the data processing staff. This amendment on page 5 dealt with preintroduced bills and those are bills that have to be introduced "by request of an agency" or "by a request of a committee." What this did was to strike the requirement that signatures can appear on the face of the preintroduced bills because reality the signature was always on the preintroduction form and we type the name of the sponsor on those preintroduced bills.

CHAIRMAN THOMAS said a motion was made to adopt the proposed amendment in section 40-40 Joint Rules deleting the words, "may appear on the face of the preintroduced bill."

Motion/Vote: **SEN. STAPLETON** moved **TO ADOPT THE PROPOSED AMENDMENT IN SECTION 40-40 SUBSECTION 6. Motion passed unanimously.**

REP. BROWN stated in the original packet they had on page 9, the chair of the conference committee on the bottom of the page, he wanted it segregated.

Motion: **REP. BROWN** moved to **AMEND SECTION 30-30 THE ADDITION OF THE AMENDMENT WITH THE SAME CHAIR AS THE HOUSE OF ORIGIN REGARDING THE CHAIR OF THE CONFERENCE COMMITTEE.**

CHAIRMAN THOMAS said they had heard the motion of **REP. BROWN** to amend the Joint Rules, Section 30-30, the language that was specified in there about the chair of the conference committees be the chair of the originating house.

SEN. COCCHIARELLA had a question for **Chief Clerk Miller** and asked if she could tell her how it works?

Chief Clerk Miller said the issue for the House was just that my folks are responsible if it was a House bill to get the staff, set up the committees, do the paper work and they didn't have access to the journal.

SEN. COCCHIARELLA asked **Secretary Skelton** if she would address how it would be if the conference committees' paper work and processing and everything came to the Senate staff because the Senate always had the chairman.

Secretary Skelton said that would be part of our responsibility to make sure that the committees are appointed and have a secretary.

CHAIRMAN THOMAS asked **Mr. Petesch** if the aspect of who staffs the conference committee is addressed in the rules? **Mr. Petesch** said no. If they wanted to go that route, that the Senate staff the committees, does it need to be reflected in the rules or reflected in practice?

Secretary Skelton said they did not need to reflect it in the rules, just in practice.

CHAIRMAN THOMAS asked **Rep. Brown** if that would clean up that process and procedure, would that satisfy your interest in this motion.

REP. BROWN said he thought that one of the situations they had here if the sponsor was in the House, it was kind of a courtesy to House, to have a chairman from the House, same goes with the Senate. He thought in this particular case that it would be easier to coordinate if the House took care of its business and the Senate took care of their business.

REP. WANZENRIED said in the spirit of moving this along, He thought this was a really good amendment for all the reasons that the house majority leader just stated. We need to have the opportunity in the House to have the dynamics of working with the chair of that committee by a sponsor from the House even though in some cases that sponsor wasn't on the conference committee. For those reasons and the other ones you stated he thought this was a good amendment.

REP. YOUNKIN thought it was poorly worded.

Motion: **REP. YOUNKIN SUBSTITUTE MOTION** moved to **TAKE OUT THE FIRST FOUR WORDS AND SAY, A CONFERENCE COMMITTEE SHALL BE CHAIRED BY A MEMBER OF THE HOUSE OF ORIGIN OF THE BILL THAT WAS THE SUBJECT OF A CONFERENCE COMMITTEE.**

CHAIRMAN THOMAS asked **Mr. Petesch** if he would state the new language as he understood it.

Mr. Petesch said the reason it was written the way it was, you actually have two separate committees meeting concurrently and so he didn't necessarily agree that it was excess verbiage. However, he believed the statement would be "A conference committee must be chaired by the member of the house of origin." There are two separate committees with two separate chairs which

were why the rule was written the way it was. He believed what you want to do was to say, "The conference committee must be chaired by the chair of the committee of the house of origin."

CHAIRMAN THOMAS addressed **Speaker Mood** and **President Keenan** if they wanted to speak to them about the motion. If this motion fails, substitute or the original, it seems that it would be the intent to go ahead as **Chief Clerk Miller** and the **Secretary Skelton** addressed the issue at hand. Was it an agreement in essence that the Senate could and would staff the conference committees? Would it be a procedure that they could follow?

SEN. KEENAN said it could be. He was concerned if there would be an adjustment to the feed bill?

CHAIRMAN THOMAS said they could answer that in one moment. He asked **SPEAKER MOOD** if he wanted to address this.

SPEAKER MOOD said certainly and historically they had granted the courtesy to the Senate to chair the committees and he didn't know which courtesy was more important. The one to the Senate or the one to the sponsor of the bill. The sponsor of the bill had some right to chair the committee that hears the bill.

Motion/Vote: **REP. YOUNKIN'S Motion failed 3-9 in the Senate with SENATORS COCCHIARELLA, ELLINGSON, AND ELLIOT VOTING AYE.**

CHAIRMAN THOMAS asked for discussion on **Rep. Brown's** motion.

Motion/Vote: **Motion failed 3-9 in the Senate with SENATORS COCCHIARELLA, ELLINGSON, AND ELLIOT VOTING AYE.**

CHAIRMAN THOMAS said that Mr. **Petes** has brought it to his attention that since the motion had failed there was an amendment that they adopted in our global amendment in section 30-10 that requested an amendment of 30-30. They needed a motion to eliminate the amendment that they adopted in the global amendment.

Motion/Vote: **SEN. KEENAN moved that TO ELIMINATE THE AMENDMENT DO PASS. Motion carried unanimously.**

CHAIRMAN THOMAS asked for a motion that this joint resolution be drafted and introduced.

Motion/Vote: **SEN. KEENAN moved that TO HAVE RESOLUTION DRAFTED AND INTRODUCED. Motion carried unanimously.**

CHAIRMAN THOMAS said he needed to get an agreement of the **President Keenan, Speaker Mood, Majority Leader Brown, Minority Leader Wanzenried, and Minority Leader Ellingson** to prioritize this bill and the Senate and House bills so that they can be expedited and drafted. All agreed.

REP. BROWN said they would convene at 1:30 P.M. in room 472.

CHAIRMAN THOMAS said the Senate would convene 1:15 P.M.

CHAIRMAN THOMAS adjourned the meeting.

ADJOURNMENT

Adjournment: 12:30 P.M.

SEN. FRED THOMAS, Chairman

FREDELLA D. HAAB, Secretary

FT/FH

EXHIBIT (rus00aad)